

Exhibit 9

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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 CASE NO. 18-MD-2865 (LAK)

4 IN RE:)
)
)

5 CUSTOMS AND TAX ADMINISTRATION OF)
6 THE KINGDOM OF DENMARK)
(SKATTEFORVALTNINGEN) TAX REFUND)
7 SCHEME LITIGATION)

8 This document relates to case nos.)
19-cv-01783; 19-cv-01788; 19-cv-01794;)
19-cv-01798; 19-cv-01918)
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14 REMOTE VTC VIDEOTAPED DEPOSITION UNDER ORAL

15 EXAMINATION OF

16 ROBERT KLUGMAN

17 DATE: January 28, 2021
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24

25 REPORTED BY: MICHAEL FRIEDMAN, CCR

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1 I mean, this was 11 years ago, so
2 not really. It...

3 Q Let me try to help you.

4 If you turn to the third-to-last
5 page?

6 A Uh-huh.

7 Q Is that your signature?

8 A Well, that's my name -- hold on,
9 signature. Yes, that's my -- that looks like
10 my signature, yes.

11 Q Okay. And do you have any
12 recollection of signing a letter agreement
13 with Solo Capital in 2010 in relation to an
14 investment in Broadgate Fund?

15 A I definitely remember an investment
16 with Solo Capital managing that investment in
17 2010. These exact specifics and the exact
18 documents I signed, my memory's much more
19 fuzzy.

20 Q What was the general nature of the
21 investment? What do you remember about that
22 investment in 2010?

23 A It was a structured investment in
24 German shares through an Irish partnership.

25 Q And how much did you invest?

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1 attorney-in-fact?

2 A There's a lot of those technical
3 terms. I'm not sure, but I know that I did
4 give Michael Ben-Jacob power of attorney.

5 Q And why did you give him power of
6 attorney?

7 A To help set up the transaction, all
8 the elements in the transaction.

9 Q And do you recall what elements of
10 the transaction he was helping you with?

11 A All of it, every element.

12 Q And that's from setting up the LLCs
13 and the plans and onboarding with the
14 different counterparties and custodians?

15 A Yes, yes. And when I say "him," I
16 mean also his firm, so there were -- it
17 wasn't just him.

18 But yes.

19 Q And then, once the plans were set
20 up, what kind of services -- how involved was
21 he in terms of helping you with the actual
22 administration or monitoring of the trading,
23 the account statements, or any of the actual
24 transactions that you were doing?

25 A Well, Kaye Scholer was involved in

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1 every part of the transaction. The intensity
2 was more in the setting up.

3 But then there were also plenty of
4 other issues, plenty of other U.S. issues
5 involved in reporting and U.S. tax, et
6 cetera.

7 Q And that was all in connection with
8 the Danish trading transaction?

9 A And Belgium trading.

10 Q Do you recall, right before the
11 first trades, the August 2014 trades, you
12 reached out to Sanjay Shah to catch up with
13 him?

14 A I don't recall that. It's quite
15 possible.

16 Q Do you recall at the end of August
17 meeting him for dinner at the Nomad Hotel?

18 A Yeah, I recall a dinner, I believe,
19 with -- Rich Markowitz and John Van
20 Merkensteijn were there and maybe -- I don't
21 recall who, but other members of Sanjay's
22 team.

23 Q And what do you recall being
24 discussed at that dinner?

25 A I think just about the transaction

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1 June 11th of 2015?

2 A It looks to be, yes.

3 Q So you'll see Mr. Markowitz is
4 writing to Peter Wells at Kaye Scholer?

5 A Yes.

6 Q Did you know Mr. Wells?

7 A Yes.

8 Q And how did you know him?

9 A He was one of the senior lawyers on
10 the team from Kaye Scholer.

11 Q And how involved was Mr. Wells in
12 the Danish trading or services that you and
13 your colleagues had needed with respect to
14 the Danish trading?

15 A He was very involved.

16 Q Okay. And what was his role,
17 generally?

18 A Well, from what I remember, he was
19 the second most senior attorney actively
20 involved in the transaction. So he was
21 really involved in, broadly speaking, in all
22 parts of the transaction.

23 Q In this e-mail, Mr. Markowitz
24 provides data for securities bought and sold
25 during May. He notes, "Also, some of the

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1 Q And what is it?

2 A This is sort of a statement summary
3 prepared by Telesto of, you know, activity
4 between January 1st and December 31st of
5 2015.

6 Q Did you provide statements of this
7 kind to Mr. Ben-Jacob?

8 A Did I? Is that the question?

9 Q Yes.

10 A I don't remember if he -- I don't
11 remember or know if he saw these.

12 Q Did you use his address for your
13 plans?

14 A For a lot of the plans, yes.

15 Q What -- was mail for the plans sent
16 to his address?

17 A Yes.

18 Q How do you know that?

19 A You're right. I didn't receive any
20 of that mail, so I don't know that the mail
21 was actually there.

22 But I know we -- for just ease of
23 use and administrative use, we had
24 centralized mailing to Kaye Scholer's office.

25 Q Was there any process for that mail

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1 know some of them were located there.

2 But I'm not sure how the number was
3 calculated.

4 Q If you turn to the next exhibit,
5 1837?

6 MR. MAGUIRE: Mark this as 1837.

7 (Whereupon the above mentioned was
8 marked for Identification.)

9 A Yes.

10 Q Do you recognize this e-mail dated
11 November 9, 2015?

12 A Yes.

13 Q And can you tell us who sent this
14 e-mail?

15 A I'm not sure exactly who sent this
16 e-mail.

17 Q Who were the people who would have
18 been privy to this e-mail?

19 A Well, it could have been myself,
20 Richard Markowitz, possibly someone at
21 Kaye Scholer.

22 Q And when you say "possibly someone
23 at Kaye Scholer," did Kaye Scholer have
24 access to the e-mail trading accounts of the
25 plans?

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1 A I think they had access to the
2 e-mails. I believe so.

3 I can't be a hundred percent
4 certain.

5 Q And you'll see, this is copied to
6 GSS Solo -- GSS@Solo.com?

7 A Yes.

8 Q And who's that?

9 A I don't know.

10 Q Did you see "GSS" used for
11 Ganymede?

12 A I saw "GSS," I think, used in the
13 account statements earlier to pay the
14 invoice. I believe we discussed that.

15 But now, I'm kind of -- I could
16 look back, but I'm not a hundred percent
17 certain.

18 Q Okay. Now, this says, "Due to the
19 recent extreme volatility in global equity
20 markets, we would like to suspend trading
21 activity."

22 What is the "extreme volatility in
23 global equity markets" that's referred to
24 here?

25 MR. ALLISON: Object to form.

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1 Q Do you have any recollection of
2 speaking with Mr. Shah on July 16 of 2017?

3 A I don't.

4 Q If you turn, sir, to Exhibit 1851?

5 MR. MAGUIRE: Mark this as 1851.

6 (Whereupon the above mentioned was
7 marked for Identification.)

8 A Yes.

9 Q Do you recognize this document?

10 A Yes, I do.

11 Q And how do you recognize it?

12 A It was a tax opinion that Solo had
13 gotten regarding the Danish transaction.

14 Q And what did you do with this?

15 A Well, I never actually -- I don't
16 believe I ever actually received this.

17 Q So, forgive me, but how do you
18 recognize it if you never received it?

19 A I thought it was given to the Argre
20 group, and they showed it to me. Although I
21 guess it is possible that Sanjay would have
22 showed it to me since it was addressed to
23 him.

24 Q Do you recall either way?

25 A I don't.

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1 Q Do you recall if you ever used this
2 for any purpose?

3 A I recall, I believe, reading it.

4 Q Anything other than reading it?

5 A I mean, it gave me some level of
6 comfort that the transaction worked.

7 Q If you look at Section 3, it talks
8 about "Contemplated Transactions?"

9 A Yes.

10 Q Do you see that?

11 A Yes.

12 Q If you look at Item 5?

13 A (Witness reviewing.)
14 Yes.

15 Q If we take the first sentence, did
16 that happen in the Danish trading model?

17 A (Witness reviewing.)
18 I think the first -- the first part
19 on the ex-dividend date, that was true. And
20 I don't know if these -- I don't know what he
21 means by "inter-dealer broker."

22 Q The second sentence says, "The
23 settlement dates for the sale of the equities
24 will be the same date as the settlement date
25 of the purchase of the equities in 2 above."

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1 represent Michael Ben-Jacob. I just have a
2 few questions for you.

3 First, was Kaye Scholer involved in
4 structuring the Danish transactions that
5 you've been discussing with Mr. Maguire?

6 A I can't -- I don't know exactly
7 what their role was in the 2012 and 2013.
8 I'm not sure how to answer the question.

9 Can you clarify a little?

10 Q I will ask you this way.

11 Was Kaye Scholer involved in
12 advising the set of transactions in Danish
13 securities that resulted in your plans
14 receiving a refund of a dividend tax
15 withholding from Denmark?

16 A Did they? I don't believe they
17 came up with the idea, no.

18 Q Was it Solo that came up with the
19 idea?

20 A I'm not sure.

21 Q Was Kaye Scholer involved in
22 executing the transactions?

23 A Can you tell me what you mean by
24 "executing?"

25 Q Well. So for each leg of the

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1 scheme?

2 A I'm not sure how I would describe
3 it, but it wasn't -- it was in line with the
4 role of lawyers that I've worked with, you
5 know, throughout my entire career from big
6 law firms.

7 It was just, generally speaking,
8 making sure everything was done correctly.

9 Q And how did Kaye Scholer know how
10 you were doing in the Danish trades?

11 A Well, they were -- again, in
12 general, involved in every aspect. And this
13 is before I got there, so I assume there was,
14 you know, two-plus years of learning because
15 I was -- I was definitely behind the curve.

16 But from what I saw, it was -- you
17 know, kind of from -- to use an overused
18 expression, "from womb to tomb," they helped
19 us in setting up the entities, they helped in
20 getting us to be approved clients of the
21 entities. They knew what trades were going
22 on.

23 They helped us with tax issues,
24 securities law issues, reporting issues,
25 yeah, just in line with how I've worked with

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1 other law firms my whole career.

2 Q And how did Kaye Scholer know how
3 you were doing the Danish trades?

4 A Well, I mean, they knew all the
5 agreements we were entering into. They
6 obviously knew how the trade worked. They
7 wrote it in their memorandum.

8 The trade wasn't that much
9 different, as we went through, i.e. -- I
10 mean, I -- they must have seen the confirms.
11 I don't know if they did or didn't, but they
12 knew the agreements under which the confirms
13 were being entered -- were -- you know, were
14 for, for the stock loan purchase and forward
15 contracts, you know.

16 And there was a lot of back and
17 forth on -- as I saw in this memo, about
18 securities limitations under securities law
19 in Denmark, which they helped us work
20 through. I know there were a lot of issues
21 back and forth with Treasury on how to report
22 this. There were obviously tax issues as we
23 saw from the memorandum.

24 So they couldn't have possibly
25 answered those questions without knowing

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1 everything that be we were doing.

2 Q And were you open in disclosing
3 what you were doing to Kaye Scholer?

4 A Absolutely.

5 Q Did you withhold any information
6 from Kaye Scholer?

7 A No.

8 MR. MAGUIRE: That's all. Thank
9 you, sir.

10 THE WITNESS: Thank you.

11 MR. MULLEN: I do have a few
12 follow-up questions.

13
14 CONTINUED EXAMINATION BY MR. MULLEN:

15 Q I apologize, Mr. Klugman. I bet
16 you thought you were getting out of here.

17 A No, don't apologize. I understand.
18 Are you Canadian?

19 Q I'm not Canadian, no.

20 A Okay. I apologize for asking. Go
21 ahead. I like to know.

22 Q Fine. Just a few follow-up
23 questions.

24 First, is it correct you don't know
25 whether or not Kaye Scholer saw the trade